

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

BARCIMEO MERINO CANDELARIA,

Petitioner,

v.

TRISTAN LEMON, Warden,

Respondent.

No. 1:24-cv-01510-SKO (HC)

**ORDER DIRECTING CLERK OF COURT
TO ASSIGN DISTRICT JUDGE**

**FINDINGS AND RECOMMENDATION
TO DISMISS PETITION**

[14-DAY OBJECTION DEADLINE]

Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. He filed the instant petition on December 11, 2024, challenging a 2022 conviction in Kern County Superior Court for numerous sex offenses. Upon review of the petition, the Court determined it was a mixed petition containing unexhausted claims. Thus, on December 16, 2024, Petitioner was directed to either amend the petition to delete the unexhausted claims, or request dismissal of the petition without prejudice so he may return to state court to exhaust his state remedies. (Doc. 4.) He was granted thirty days to do so. Over thirty days have passed, and Petitioner has not complied with the Court's order. Petitioner was advised that failure to comply with the Court's order would result in a recommendation that the petition be dismissed.

In light of the foregoing and for the reasons set forth in the Court's previous order, the Court will recommend the petition be dismissed without prejudice for failure to exhaust state remedies.

ORDER

The Clerk of Court is DIRECTED to assign a district judge to the case.

DISCUSSION

The Court HEREBY RECOMMENDS that the petition be dismissed without prejudice for failure to exhaust state remedies.

This Findings and Recommendation is submitted to the United States District Court Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636 (b)(1)(B) and Rule 304 of the Local Rules of Practice for the United States District Court, Eastern District of California. Within fourteen (14) days after being served with a copy of this Findings and Recommendation, a party may file written objections with the Court and serve a copy on all parties. Id. The document should be captioned, “Objections to Magistrate Judge’s Findings and Recommendation” and shall not exceed fifteen (15) pages, except by leave of court with good cause shown. The Court will not consider exhibits attached to the Objections. To the extent a party wishes to refer to any exhibit(s), the party should reference the exhibit in the record by its CM/ECF document and page number, when possible, or otherwise reference the exhibit with specificity. Any pages filed in excess of the fifteen (15) page limitation may be disregarded by the District Judge when reviewing these Findings and Recommendations pursuant to 28 U.S.C. § 636 (b)(1)(C). The parties are advised that failure to file objections within the specified time may result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 838-39 (9th Cir. 2014). This recommendation is not an order that is immediately appealable to the Ninth Circuit Court of Appeals. Any notice of appeal pursuant to Rule 4(a)(1), Federal Rules of Appellate Procedure, should not be filed until entry of the District Court’s judgment.

IT IS SO ORDERED.

Dated: **February 3, 2025**

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE